

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

NOV -7 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0191-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ALVARO GOMEZ CARRILLO,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054515

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Alvaro Carrillo

Safford
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Pursuant to a plea agreement, petitioner Alvaro Carrillo was convicted of conspiracy to commit theft of a means of transportation. The trial court sentenced him to an aggravated, five-year term of imprisonment. This petition for review follows the trial court's order dismissing his post-conviction proceeding.

¶2 Carrillo timely filed a notice of post-conviction relief. Appointed counsel filed a notice in lieu of a petition for post-conviction relief pursuant to Rule 32.4(c)(2), Ariz. R. Crim. P., stating that, after a thorough review of the record and transcripts, he had found no ground for relief. Although the trial court extended the time limit within which Carrillo could file a pro se petition for post-conviction relief, Carrillo never did. About five months after the extended deadline, Carrillo requested an additional extension of time to file his petition. The trial court denied that request, noting that it had already extended the due date for the petition and had waited over a month beyond the extended deadline before summarily dismissing the post-conviction proceedings. The trial court also noted that Carrillo had “failed to present any substantive issue which appears to have any prima facie merit.”

¶3 Rule 32.4(c)(2) provides that any extensions beyond forty-five days from a notice in lieu of a petition for post-conviction relief “shall be granted only upon a showing of extraordinary circumstances.” Carrillo showed no extraordinary circumstances for his requested extension. He did not challenge the trial court’s denial of the additional extension below, nor does he do so on review. Instead, Carrillo raises several issues, including sentencing error and ineffective assistance of counsel, for the first time in his petition for review. We will not address these issues, however, because they must first be presented to the trial court. *See* Ariz. R. Crim. P. 32.9(c)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present to

the appellate court for review”); *see also State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (issues may not be raised for first time in petition for review); *cf. State v. Youngblood*, 173 Ariz. 502, 504, 844 P.2d 1152, 1154 (1993) (“Even on direct appeal, we generally refuse to consider claims that are not raised below.”). And, because there was nothing for the trial court to review, we cannot find the court abused its discretion by summarily dismissing the post-conviction proceeding. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986) (appellate court will not disturb trial court’s order denying post-conviction relief absent abuse of discretion).

¶4 Although we grant review of Carrillo’s petition, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge